United States Court of Appeals

for the Second Circuit

APPENDIX

ORIGINAL

75-7039

United States Court of Appeals
FOR THE SECOND CIRCUIT

JOSEPH M. SCOTT, SR.,
Plaintiff-Appellee,

against

NONNEWAUG REGIONAL SCHOOL DISTRICT NO. 14, ET AL.,
Defendants-Appellants.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

JOINT APPENDIX

VAUSE & SULLIVAN
Attorneys for Appellant
Nonnewaug Regional
School District No. 14
410 Asylum Street
Hartford, Connecticut 06103

O'MALLEY, DENEEN, MESSINA & OSWECKI
Attorneys for Appellant
Town of Bethlehem
20 Maple Avenue
Windsor, Connecticut 06095

W. FIELDING SECOR
Attorney for Appellee
Town of Woodbury and
First Selectman
41 Church Street
Waterbury, Connecticut 06720

CARL R. BURNS
Attorney for Appellee Scott
143 Rowayton Avenue
Rowayton, Connecticut 06853

PAGINATION AS IN ORIGINAL COPY

INDEX TO APPENDIX

DOCKET ENTRIES

B 538
JON

CIVIL DOCKET
UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

Jury demand date: /

D. C. Form No. 106 Rev.

TITLE OF CASE	ATTORNEYS
JOSEPH M. SCOTT, SR. vs. NONNEWAUG REGIONAL SCHOOL DISTRICT NO. 14, THE TOWN OF WOODBURY, CONNECTICUT, THE TOWN OF BETHLEHEM, CONNECTICUT, Withdrawn HOWARD McLAUGHLIN, Chairman, Nonnewaug 10/24/72 Regional School District No. 14, Shealy** J. LAWRENCE POND, First Selectman, Town of Woodbury, and SAMUEL J. SWENDSEN, First Selectman, Town of Bethlehem ed J.L.Pond 6/5/74 Town of New Hartford, as amicus curiae Fielding Secor (For: Town of Woodbury and First son, Secor, Cassidy & McPartland ((Selectman of Town of Church St. (Woodbury) terbury, Ct. 06720 For Defendant(s): Donald J. Deneen (for: Town of Bethelehem) Andrew G. Messina,Jr. O'Malley, Deneen, Messina & Oswecki 20 Maple Avenue Windsor, Connecticut 06095 homas N.Sullivan,Esq.; Vause & Sullivan,Esqs. 10 Asylum St.,Htfd.,Ct. 06103 (for: Nonewaug Regional School District No.14)	For plaintiff: Carl R. Burns 143 Rowayton Avenue 39 North Main Street South Norwalk, Connecticut 06854 P.O. Box 191 Rowayton, Ct. 06853 For defendant: Norman K. Jellinghaus (for: Town of Woodbu Weisman, Weisman & Resnick -- Jr Lawrence Po 49 Leavenworth Street ---- Marin J. Shealy Waterbury, Connecticut Withdrawn 1/24/75. W. Gary Vause (For: Nonnewaug School Di 410 Asylum Street Bethlehem, Howard Waterbury, Connecticut McLaughlin and Samu Hartford, Ct. J. Swendsen) Ralph G. Elliott Alcorn, Bakewell & Smith One American Row Hartford, Conn. 06103 (For: Town of New Hartford, as amicu curiae)

STATISTICAL RECORD	COSTS			DATE 1972	NAME OR RECEIPT NO.	REC.	DISB.
J.S. 5 mailed	Clerk			7/6	Carl R. Burns	$15.00	
				7/7	Deposit GF-100869		$15.00
J.S. 6 mailed	Marshal			1975			
				1/7	Donald J.Deneen Appeal Fee,Deft.Nonnewaug	5.00	
Basis of Action: Application for permanent injunction to reprganize regional school district to provide for equal	Docket fee			1/7	Donald J.Deneed Appeal Fee,Deft.Tn.Bethlehem	5.00	
	Witness fees			1/24	Deposit (2)		
Attorney's: representation on school board. 5th and 14th Amendments to U. S. Const.	Depositions			"	GF-100869		10.00

A 2

Docket Entries

B 538

DATE	PROCEEDINGS	Date Order Judgment N.
1972		
7/3	Complaint, filed.	
"	Notice and Application for Preliminary Injunction, filed	
"	Motion for Hearing Before Three-Judge District Court, filed.	
7/5	Summons issued and together with copies of same and of Complaint, Notice, Application and Motion for Three-Judge Court, mailed to the U. S. Marshal for service. (Attorney's [illegible] 8/7/72 [illegible]	
7/7	Papers returned by U. S. Marshal.	
7/11	Order Appointing James C. Whitney to Serve Process, entered. EARL, C. Summons, copies of Complaint, Notice, Application and Motion for Three-Judge Court, mailed to Sheriff Whitney. Cert. Mail #257303	
7/13	Cert. Mail Receipt #257303, received. James C. Whitney.	
7/24	Return of James C. Whitney Showing Service, filed. Summons and Complaint.	
8/3	Withdrawal of Application for Preliminary Injunction, filed by Plaintiff.	
"	Withdrawal of Motion for Hearing Before Three Judge District Court, filed by Plaintiff.	
8/7	Appearance of W. Gary Vause, Esq., entered for the Defendants Nonnewaug Regional School District No. 14, Town of Bethlehem, Howard McLaughlin and Samuel J. Swendsen.	
"	Appearance of Norman K. Jellinghaus, Esq., entered for the Defendants Town of Woodbury, and J. Lawrence Pond.	
10/24	Withdrawal of Action as to Defendant Howard McLaughlin, filed by the Plaintiff.	
12/18	Answer of Defendants Nonnewaug Regional School District No. 14, ROY O. WALLS, SAMUEL J. SWENDSEN and THE TOWN OF BETHLEHEM, CONN., filed.	
12/21	Answer of Defendants The Town of Woodbury, Connecticut, and J. Lawrence Pond, First Selectman, Town of Woodbury, filed.	
1973		
8/3	Placed on Trial List.	
9/17	Request to extend time for submitting Stipulation of Facts until 10/1/73 per letter dated 9/10/73 from plaintiff, endorsed: "So ordered." Newman, J. M-9/17/73. Copies to counsel.	
11/7	Stipulated Facts, filed by parties.	
1974 4/24	Plaintiff's Motion for Summary Judgment, filed. [illegible]	
4/24	Plaintiff's Memorandum in Support of Motion for Summary Judgment, filed.	
5/29	Motion for Summary Judgment, filed by defendants Nonnewaug Regional School Dist. No. 14, Town of Bethlehem, Ct., Roy O. Walls as Chairman of Reg. School Dst. No. 14, and Samuel J. Swendsen as First Selectman of the Town of Bethlehem.	
5/29	Memorandum in Opposition to Plaintiff's Motion for Summary Judgment and In Support of Defendants' Motion for Summary Judgment, filed by defts. Nonewaug School Dist. #14, R, Walls, Town of Bethlehem, and Samuel J. Swendsen.	

A 3

Docket Entries

B-538 B-538

JOSEPH M. SCOTT, SR., v. - 2 -
NONNEWAUG REG. SCHOOL DIST. NO. 145

DATE 1974	PROCEEDINGS	Date Order o Judgment No
5/29	Defendants' Response to Motion for Leave to Enter as Amicus Curiae, filed.	
5/28**	Motion of the Town of New Hartford for Permission to Intervene as Amicus Curiae, filed.	
5/28**	Memorandum of Law of Town ofNew Hartford as Amicus Curiae, filed.	
5/29	Memorandum of Law on Plaintiff's Motion for Summary Judgment by the Defendants, The Town of Woodbury, and First Selectman, Town of Woodbury, filed.	
6/5	Per Amended Miscellaneous Calendar of J.O.N.: 1. Plaintiff's Motion for Summary Judgment; and 2. Defendants' (Nonnewaug Regional School District $14, The Town of Bethlehem, Ct., Roy O. Walls, as Chairman of Regional School District #14, and Samuel J. Swendsen, etc.,) Motion for Summary Judgment: DECISION RESERVED. 3. Motion of Town of New Hartford for Permission to Intervene as Amicus Curiae- GRANTED. Plaintiff withdraws issue of class action. Counsel stipulate that J. Lawrence Pond be replaced by the new First Selectman Marin J. Shealy. Appearance of Ralph G. Elliot, 1 American Row, Hartford, Ct., entered for the Town of New Hartford as amicus curiae. M-6/5/74. (Gale, R., Thorner, D.C.) Court opened at 10:00 a.m., adjourned at 1:00 p.m.	
6/10	Court Reporter's Notes of proceedings held on 6/5/74 at New Haven before Newman, J., filed at Bpt.	
11/22	MEMORANDUM OF DECISION, filed and entered. NEWMAN, J. Permanent injunctive relief is denied, without prejudice to a renewed application after March 1, 1975. At any time prior to that date, any parties may submit to the Court their proposals for reapportionment plans and implementation procedures, which the Court will review before formulating a final decree after Mar. 1, 1975. The request for interim relief pending entry of a final decree is denied. Plaintiff's motion for summary judgment is granted and judgment will enter declaring that the allocation of membership on the Board ofEduc. of Nonnewaug deprives plaintiff of the equal protection of the laws in violation of the 14th Amendment. Defendants' Motion for Summary Judgment is denied. Copies to counsel and to TEC, MJB, RCZ, JON, AHL and U. Conn. Law Review. M-11/26/74.	
12/5	Judgment, filed and entered. It is accordingly ORDERED, ADJUDGED and DECREED that judgment be and is hereby entered in favor of the plaintiff on the plaintiff's Motion for Summary Judgment and judgment is entered declaring that the allocation of membership on the Board of Education of Nonnewaug Regional School District No. 14 deprives plaintiff of equal protection of the laws in violation of the 14th Amendment. Markowski, C. M- 12/6/1974. Copies to all counsel.	
12/17	Appearance of Donald J. Deneen, Esq., and Andrew G. Messina, Jr., Esq., entered for Defendant Town Of Bethelehem.	
12/23	Appearance of Thomas N. Sullivan, Esq., entered for defendant Nonnewaug Regional School District No. 14.	
1975 1/3	RULING On Request For Rule 54(b) Certification, filed and entered. The Court finds there is no just reason for delay and directs entry of judgment in favor of the plaintiff on the claims for declaratory relief. NEWMAN,J. M-1/3/75.	

continuec

Docket Entries

D. C. 110 Rev. Civil Docket Continuation

DATE	PROCEEDINGS	Date Orde Judgment
1975		
1/3 (cont'd.)	Copies to Attys. Burns, Jellinghaus, Vause, Elliott, Deneen, Messina, and Sullivan, MJB, TEC, RCZ, JON, AHL and U.Conn. Law Review.	
1/6	Notice Of Appeal, filed by Defendant Nonnewaug Regional School District #14.	
1/6	Bond For Costs On Appeal, filed by Defendant Nonnewaug Regional School District No.14, in amount of $250.00 with surety. Copies of Notice of Appeal and Bond For Costs On Appeal sent Attys. Burns, Jellinghause, Vause, Elliott, Deneen, Messina and Sullivan.	
1/6	Notice Of Appeal, filed by Defendant Town Of Bethlehem.	
1/6	Bond For Costs On Appeal, filed by Defendant Town Of Bethlehem, in the amount of $250.00 with surety. Copies of Notice of Appeal and Bond For Costs On Appeal sent Attys. Burns, Jellinghause, Vause, Elliott, Deneen, Messina, and Sullivan.	
1/7	Cert. Copy of Notices of Appeal and certified copies of docket entries forwarded Clerk, U.S.C.A. Copies of Bonds for Costs on Appeal (certified) also forwarded.	
1/7	Copy of Civil Appeals Management Plan, Forms C & D sent Attys. Deneen and Sullivan.	
1/21	Appearance of W. Fielding Secor, Esq., entered for defendants, Town of Woodbury and for the First Selectman, Town of Woodbury. (In lieu of Norman K. Jellinghouse's appearance.)	
1/21	Motion (of Atty. Norman K.Jellinghaus) To Withdraw Appearance, filed.	
1/8**	Judgment, filed and entered. The Court having granted the plaintiff's motion for summary judgment and rendered its Ruling on Request for Rule 54(b) Certification finding there is no just reason for delay, Judgment is entered declaring the allocation of membership on the board of District No. 14, deprives the plaintiff of the equal protection of the law in violation of the Fourteenth Amendment. Markowski, C. M-1/8/75. APPROVED: NEWMAN, J. Copies to counsel of record.	
1/24	Motion of Atty.Jellinghaus To Withdraw Appearance, endorsed: "Granted." ZAMPANO, J. M-1/24/75. Copies to Attys. Burns, Jellinghaus, Vause, Elliott, Secor, Deneen, Messina, Sullivan.	
1/27	Per letter of Carl R. Burns,Esq., of Jan.23,1975, address changed to 143 Rowayton Avenue, Rowayton, Conn. 06853.	

SUBSTITUTE COMPLAINT

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

JOSEPH M. SCOTT, SR. Plaintiff	)	
VS.	)	
NONNEWAUG REGIONAL SCHOOL DISTRICT NO. 14	)	
THE TOWN OF WOODBURY, CONNECTICUT	)	
THE TOWN OF BETHLEHEM, CONNECTICUT	)	NO.
ROY O. WALLS CHAIRMAN, NONNEWAUG REGIONAL SCHOOL DISTRICT NO. 14	)	
J. LAWRENCE POND FIRST SELECTMAN, TOWN OF WOODBURY	)	
SAMUEL J. SWENDSEN FIRST SELECTMAN, TOWN OF BETHLEHEM Defendants	)	

SUBSTITUTE COMPLAINT

1. This action arises under the Fifth and Fourteenth Amendments of the Constitution of the United States, as hereinafter more fully appears. The matter in controversy exceeds, exclusive of interest and costs, the sum of $10,000.

2. Plaintiff is a resident, an elector, and a taxpayer of the Town of Woodbury, Connecticut. This action is brought on behalf of plaintiff and on behalf of all other persons similarly situated who are residents, electors, and taxpayers of the Town of Woodbury. Such persons number approximately two thousand nine hundred (2,900) and, therefore, are so

numerous as to make it impracticable to bring them all before the court. There are questions of law or fact presented herein which are common to the entire class of persons represented by plaintiff herein, and plaintiff's claims hereinafter set forth are typical of the claims of all of the members of the class; plaintiff is qualified to, and will, fairly and adequately protect the interests of each and all of the members of the class.

3. The Town of Bethlehem, Connecticut, has a population of slightly more than one thousand nine hundred and fifty (1,950) and slightly more than one thousand one hundred seventy-five (1,175) electors.

4. The Town of Woodbury, Connecticut, has a population of slightly more than five thousand eight hundred sixty (5,860) and slightly more than two thousand nine hundred (2,900) electors.

5. Samuel J. Swendsen is the First Selectman of the Town of Bethlehem.

6. J. Lawrence Pond is the First Selectman of the Town of Woodbury.

7. On May 20, 1968, the electors of the Town of Bethlehem and the electors of the Town of Woodbury, in separate referendums called for that purpose, voted for the establishment of a joint regional school district for the two towns.

8. The regional school district established by the referendums referred to in paragraph 7 became operative on July 1, 1968, designated as

Nonnewaug Regional School District No. 14 (hereinafter referred to as the "regional district"). Roy O. Walls is chairman of said regional district.

9. The regional district was organized and now functions under sections 10-39 through sections 10-63i of the Connecticut General Statutes, as amended. The regional district and its elected board of education has, by delegation from the State of Connecticut, certain legislative and other powers as more fully set forth in said statutes.

10. The affairs of the regional district, pursuant to the Connecticut statutes, are governed by a regional board of education. As determined by the temporary regional school study committee established under said statutes, the regional board of education for the regional district consists of eight members, four of whom are residents of the Town of Bethlehem and are elected by the electors of the Town of Bethlehem and four of whom are residents of the Town of Woodbury and are elected by the electors from the Town of Woodbury. All members of the board of education serve for three-year terms.

11. Operating pursuant to said Connecticut statutes, the Town of Bethlehem and Woodbury contribute to the budget of the regional district. For the entire period of its existence, the Town of Woodbury has contributed a far greater share of the budgets than has the Town of Bethlehem. For the 1971-72 budget, which totaled $1,289,130, the Town of Woodbury contributed $945,025 or 73.3% and the Town of Bethlehem contributed

$344,105 or 26.7%. The contributions of the Town of Woodbury are derived from funds raised by taxation of its residents and property owners. Plaintiff and the other taxpayers of Woodbury are thus contributors to the budget of the regional district.

12. As indicated herein, the Town of Woodbury has approximately three times as many residents and electors as does the Town of Bethlehem and contributes nearly three times the amount of money to the operation of the regional district as does the Town of Bethlehem. But each town has an equal number of representatives on the board of education of the regional district. Accordingly, plaintiff and the other residents, electors and taxpayers of the Town of Woodbury do not have equality of voting rights as guaranteed by the Constitution and are thus denied equal protection of the laws provided by the Fourteenth Amendment of the Constitution of the United States and are deprived of their rights under the Fifth Amendment to the Constitution of the United States.

Wherefore, the plaintiff requests:

1. A permanent injunction requiring the defendants to reorganize the regional district to provide, as nearly as is practicable, for equal representation, on its elected board of education, for all of the electors of the Town of Woodbury and Bethlehem.

2. A temporary injunction enjoining defendants, their respective agents, servants, employees, and attorneys from doing any acts in the

operation of the Nonnewaug Regional School District No. 14 until the determination of this action.

3. Judgment for plaintiff, including costs of this suit, and for such other and further relief as to the honorable court may appear just and proper.

JOSEPH M. SCOTT, SR.
Plaintiff for himself and for other persons similarly situated who are residents, electors, and taxpayers of the Town of Woodbury

By_____
Attorney for Plaintiff

CERTIFICATE OF SERVICE

This is to certify that copies of the foregoing substitute complaint have been mailed this day of October, 1972, to all counsel of record.

_____

A 10

ANSWER OF TOWN OF WOODBURY

THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

JOSEPH M. SCOTT, SR. Plaintiff VS. NONNEWAUG REGIONAL SCHOOL DISTRICT NO. 14, THE TOWN OF WOODBURY, CONNECTICUT THE TOWN OF BETHLEHEM, CONNECTICUT ROY O. WALLIS, Chairman, Nonnewaug Regional School District No. 14, J. LAWRENCE POND, First Selectman, Town of Woodbury, and SAMUEL J. SWENDSEN, First Selectman, Town of Bethlehem, Defendants	Civil Action File No. B-538 ANSWER OF DEFENDANTS THE TOWN OF WOODBURY, CONNECTICUT and J. LAWRENCE POND, First Selectman, Town of Woodbury

A N S W E R

1. The defendants are without knowledge or information sufficient to form a belief as to the truth of the averments in paragraph 1.

2. The defendants are without knowledge or information sufficient to form a belief as to the truth of the averments in paragraph 2.

3. Paragraph 3 is admitted.

4. Paragraph 4 is admitted.

5. Paragraph 5 is admitted.

6. Paragraph 6 is admitted.

7. Paragraph 7 is admitted.

8. Paragraph 8 is admitted.

9. Paragraph 9 is admitted.

10. Paragraph 10 is admitted.

11. Paragraph 11 is admitted.

12. The averments made in the first two sentences of paragraph 12 are admitted; the averments in the last sentence are denied.

THE TOWN OF WOODBURY, CONNECTICUT
and J. LAWRENCE POND, First
Selectman, Town of Woodbury

By_____
Norman K. Jellinghaus, Town
Counsel
c/o Weisman & Weisman & Rosnick
49 Leavenworth Street
Waterbury, Connecticut

This is to certify that copies of the foregoing answur have been mailed this 20th day of December, 1972 to all counsel of record.

_____
Norman K. Jellinghaus

ANSWER OF NONNEWAUG REGIONAL SCHOOL DISTRICT NO. 14
AND TOWN OF BETHLEHEM

THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF CONNECTICUT

Civil Action
File No. B-538

JOSEPH M. SCOTT, SR.

Plaintiff

VS.

NONNEWAUG REGIONAL SCHOOL DISTRICT NO. 14,
THE TOWN OF WOODBURY, CONNECTICUT
THE TOWN OF BETHLEHEM, CONNECTICUT
ROY O. WALLS, Chairman, Nonnewaug Regional School District No. 14,
J. LAWRENCE POND, First Selectman, Town of Woodbury and
SAMUEL J. SWENDSEN, First Selectman, Town of Bethlehem, Defendants

ANSWER
OF DEFENDANTS NONNEWAUG REGIONAL SCHOOL DISTRICT NO. 14, ROY O. WALLS, SAMUEL J. SWENDSEN, AND THE TOWN OF BETHLEHEM, CONNECTICUT

A N S W E R

1. The defendants are without knowledge or information sufficient to form a belief as to the truth of the averments in paragraph 1.
2. The defendants are without knowledge or information sufficient to form a belief as to the truth of the averments in paragraph 2.
3. Paragraph 3 is admitted.
4. Paragraph 4 is admitted.
5. Paragraph 5 is admitted.
6. Paragraph 6 is admitted.
7. Paragraph 7 is admitted.
8. Paragraph 8 is admitted.
9. Paragraph 9 is admitted.
10. Paragraph 10 is admitted.
11. Paragraph 11 is admitted.

12. The averments made in the first two sentences of paragraph 12 are admitted; the averments in the last sentence are denied.

NONNEWAUG REGIONAL SCHOOL DISTRICT NO. 14, ROY O. WALLS, SAMUEL J. SWENDSEN, and THE TOWN OF BETHLEHEM, CONNECTICUT

By W. Gary Vause
W. Gary Vause
Attorney for Defendants

This is to certify that copies of the foregoing answer have been mailed this 14th day of December, 1972 to all counsel of record.

W. Gary Vause
W. Gary Vause

STIPULATED FACTS

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

JOSEPH M. SCOTT, SR. Plaintiff	)	
V.	)	
NONNEWAUG REGIONAL SCHOOL DISTRICT NO. 14	)	
THE TOWN OF WOODBURY, CONNECTICUT	)	
THE TOWN OF BETHLEHEM, CONNECTICUT	)	
ROY O. WALLS CHAIRMAN, NONNEWAUG REGIONAL SCHOOL DISTRICT NO.14	)	NO.
J. LAWRENCE POND FIRST SELECTMAN, TOWN OF WOODBURY	)	
SAMUEL J. SWENDSEN FIRST SELECTMAN, TOWN OF BETHLEHEM Defendants	)	

STIPULATED FACTS

The parties in this action, acting by and through their respective attorneys, hereby stipulate and agree that the following is a statement of the facts upon which the issues of this case shall be decided.

1. The matter in controversy, exclusive of interest and costs, exceeds the sum of $10,000 dollars.

2. Plaintiff is a resident, an elector, and a taxpayer of the Town of Woodbury, Connecticut.

3. J. Lawrence Pond is the First Selectman of the Town of Woodbury.

4. Samuel J. Swendsen is the First Selectman of the Town of Bethlehem.

5. The Town of Woodbury, Connecticut, had a population in 1970 of five thousand eight hundred sixty-nine (5,869) according to the U. S. Bureau of the Census, U. S. Census of Population: 1970.

6. The Town of Woodbury had three thousand six hundred fifty-three (3,653) electors as of June 1, 1973.

7. The Town of Bethlehem, Connecticut, had a population in 1970 of one thousand nine hundred and twenty-three (1,923) according to the U. S. Bureau of the Census, U. S. Census of Population: 1970.

8. The Town of Bethlehem had one thousand two hundred ninety-eight (1,298) electors as of June 27, 1973.

9. Formation of a joint regional school district comprising the towns of Woodbury and Bethlehem was recommended by a temporary Regional School Study Committee which was established by the towns of Woodbury (by Town Meeting on March 26, 1968) and Bethlehem (by Town Meeting on March 27, 1968) under the Connecticut General Statutes. Five members from each town served on the Committee.

10. On May 20, 1968, the electors of the Town of Bethlehem and the electors of the Town of Woodbury, in separate referendums called for that purpose, voted for the establishment of a joint regional school district for the two towns (hereinafter sometimes referred to as the "member towns").

11. The regional school district established by the referendums referred in paragraph 10 became operative on July 1, 1968, designated as Nonnewaug Regional School District No. 14 (hereinafter referred to as the "regional district").

12. The regional district was organized and now functions under the Connecticut General Statutes, as amended, pertaining to regional school districts, pertinent portions of which are referred to below.

13. As of May, 1973, there were one thousand three hundred eighty-five (1,385) pupils resident of the town of Woodbury attending school in the regional district.

14. As of May, 1973, there were four hundred ninety-two (492) pupils resident of the Town of Bethlehem attending school in the regional district.

15. Pursuant to the Connecticut statutes, the affairs of the regional

district are administered by a regional board of education (hereinafter referred to as the "regional board"). The regional board consists of eight members, four of whom are residents of the Town of Bethlehem and are elected by the electors of the Town of Bethlehem, and four of whom are residents of the Town of Woodbury and are elected by the electors of the Town of Woodbury. All the members of the regional board serve for three-year terms. In carrying out its statutory functions, the regional board meets regularly on the fifteenth of each month, and holds special meetings from time to time as the need arises.

16. Roy O. Walls is chairman of the regional board.

17. Connecticut law provides that a regional board of education shall consist of not fewer than five nor more than nine members. Each member town shall elect at least one member of a regional board of education.

18. The two member towns have contributed and continue to contribute substantially to the annual budget of the regional school district. Pursuant to the budgetary process set forth in Section 10-51 C.G.S.A. (copy attached), the regional district has prepared the regional school budget, and then presented it to the electors of the regional district, who are the electors of the two member towns, for approval. After the budget is approved by the electors, the regional board determines the amount to be paid by each of the two towns, in accordance with the statutory formula. The contributions of the two towns are derived principally from local property taxes. The amounts of the regional district budget, and the respective contributions for Woodbury and Bethlehem for the fiscal years of 1973-74, 1972-73 and 1971-72 are as follows:

YEAR	REGIONAL DISTRICT BUDGET	WOODBURY	BETHLEHEM
1971-1972	$ 1,289,130	$ 945,025	$ 334,105
1972-1973	1,586,600	1,161,796	424,804
1973-1974	1,661,074	1,225,595	435,479

19. The regional board has all the powers and duties conferred upon

boards of education by the general statutes of the State of Connecticut not inconsistent with the provisions of those statutes relating to regional school districts and regional boards of education. With respect to the towns of Woodbury and Bethlehem, the regional board is responsible, under the general statutes, for maintaining "good public elementary and secondary schools, for implementing "the educational interests of the State" as defined by statute, and for providing "such other educational activities as in their judgment will best serve the interest of the Town(s)". In carrying out these functions the duties of the regional board include:

a. Having charge of the schools of the two towns;

b. making a continuing study of the need for school facilities and of a long-term school building program and from time to time making recommendations based on such studies to the towns;

c. being responsible for the care, maintenance and operation of the buildings, lands, apparatus and other property used for school purposes;

d. determining the number, age and qualifications of the pupils to be admitted into each school;

e. employment and dismissal of the teachers of the schools of the towns, subject to provisions of section 10-151 and 10-158(a) C.G.S.A.;

f. designation of the schools which shall be attended by the various children within the two towns;

g. causing each child between the ages of seven and sixteen living in the two towns to attend school in accordance with the provisions of section 10-184, C.G.S.A.;

h. prescribing rules for the management, studies, classification and discipline of the public schools;

i. subject to the control of the state board of education, prescribing the textbooks to be used;

j. making rules for the arrangement, use and safekeeping, within

the two towns, of the school libraries and approving the books selected therefor;

k. approving plans for schoolhouses and superintending any high or graded school in the manner specified by law; and

l. performing all acts required of them by the two towns or necessary to carry into effect the powers and duties imposed on them by law.

20. In addition to the powers and duties enumerated in paragraph 19, which are those of boards of education generally, the Connecticut statutes provide that the regional board:

a. may purchase, lease or rent property for school purposes and, as part of the purchase price, may assume and agree to pay any bonds or other capital indebtedness issued by a town for any land and buildings so purchased;

b. shall perform all acts required to implement the plan of the temporary regional school study committee for the transfer of property from the two towns to the regional district and may build, add to or equip schools for the benefit of the towns of Woodbury and Bethlehem;

c. may receive gifts of real and personal property for the purposes of the regional district; and

d. conducts the regional district annual meeting on the first Monday in May of each year, and may convene special regional district meetings when it is deemed necessary.

21. a. The regional district is a body politic and corporate with power to sue and be sued. It has power to purchase, receive, hold and convey real and personal property for school purposes, and to build, equip, purchase, rent, maintain or expand schools. The regional district may issue bonds in the name and upon the full faith and credit of the regional district and the member towns to acquire land, prepare sites, purchase or erect buildings and equip the same for school purposes, if so authorized by referendum. Such bonds are the general obligations of the regional district and the member towns.

b. When the regional district has been authorized to issue general

obligation bonds, the regional board may authorize, for a period not to exceed four years, the issue of temporary notes in anticipation of the receipt of the proceeds from the sale of such bonds.

c. In addition to the power to issue bonds the regional board may, when so authorized by a majority vote at a regional district meeting, borrow sums of money, not to exceed two hundred thousand ($200,000) dollars for acquiring lands, securing the services of architects and professional consultants, the operation and maintenance of regional schools, the installation of equipment therein, and contingent or other necessary expenses connected therewith.

S/Carl R. Burns
Carl R. Burns
Attorney for Plaintiff,
Joseph M. Scott, Sr.

S/W. Gary Vause
W. Gary Vause
Attorney for Defendants,
Nonnewaug Regional School
District No.14, Roy O. Walls,
Samuel J. Swendsen, and the
Town of Bethlehem, Connecticut

October 12, 1973

S/Norman K. Jellinghaus
Norman K. Jellinghaus
Attorney for Defendants,
The Town of Woodbury, Connectidut
and J. Lawrence Pond, First
Selectman, Town of Woodbury

MEMORANDUM OF DECISION, NEWMAN, U.S.D.J.

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

JOSEPH M. SCOTT, SR.	:	
	:	
V.	:	CIVIL NO. B-538
	:	
NONNEWAUG REGIONAL SCHOOL DISTRICT NO. 14, ET AL	:	
	:	
JOHN E. BAKER, ET AL	:	
	:	
V.	:	CIVIL NO. N-74-75
	:	
REGIONAL HIGH SCHOOL DISTRICT NO. 5, ET AL	:	

MEMORANDUM OF DECISION

These motions for summary judgment present identical questions concerning the applicability of one person-one vote principles to boards of education of Connecticut's regional school districts. See generally, Conn. Gen. Stat. §§ 10-39 to 10-63i. Plaintiff in Civil No. B-538 (Scott), a resident, taxpayer, and elector of the Town of Woodbury, seeks the reorganization of the Board of Education of Nonnewaug Regional School District No. 14, which administers the joint elementary and secondary school systems of the Towns of Woodbury and Bethlehem.[1/] In Civil No. N-74-75 (Baker), plaintiffs are residents, taxpayers, and electors of the Town of Orange, and

they seek re-organization of the Board of Education of Regional High School District No. 5, which includes the Towns of Orange, Bethany and Woodbridge.

The defendants in Scott are Regional District No. 14, the chairman of the District's Board of Education, the Towns of Woodbury and Bethlehem, and the First Selectman of each Town.[2/] In Baker the defendants are Regional District No. 5, its Board of Education and the members of the Board, the District's superintendent, and the treasurers and clerks of the Towns of Orange, Woodbridge and Bethany.

In addition, the Towns of Bethany and Woodbridge have moved to intervene as defendants in Baker. They argue that they have significant interests not adequately protected by the present defendants, and that only they are properly situated to protect the interests of their residents and electors.[3/] However, the elected representatives of the voters who are already parties to this action are equal to that task. Cf. Powers v. Maine School Administrative District No. 1, 359 F.Supp. 30 (D. Me. 1973); Leopold v. Young, 340 F.Supp. 1014 (D. Vt. 1972). The Towns as such do not have any substantial interest in the controversy; they are merely election districts from which board members are chosen. Cf.

Butterworth v. Dempsey, 229 F.Supp. 754, 798-99 (D. Conn. 1964)(three-judge court), aff'd sub nom. Town of Franklin v. Butterworth, 378 U.S. 562 (1964). See Reynolds v. Sims, 377 U.S. 533, 562 (1964). Moreover, an appropriately fashioned remedy will adequately protect the Towns. See 3A Moore's Federal Practice ¶ 19.07-2[2]. The motions to intervene are denied.

In both actions plaintiffs argue that the present apportionment of membership on their respective regional boards of education impermissibly dilutes their voting power and deprives them of the equal protection of the laws. They claim jurisdiction under 28 U.S.C. § 1343(3), and request a variety of injunctive relief pursuant to 42 U.S.C. § 1983. In Scott the parties have stipulated to the material facts,[4/] and both actions are before the Court on motions for summary judgment.[5/]

Preliminarily, the Baker defendants dispute this Court's jurisdiction and urge that a three-judge court must be convened to hear the suit. They rely primarily on Judge Timbers' tentative opinion in Giordano v. Amity Regional High School District #5, 313 F.Supp. 403 (D. Conn. 1970). The simple answer to this claim is one not raised by the parties

in Giordano (although recognized as persuasive by Judge Timbers, 313 F.Supp. at 408-09, n. 9), but pressed strenuously by all plaintiffs in the present actions. Plaintiffs here do not seek to enjoin enforcement of a statute of statewide application. Compare Hadley v. Junior College District of Metropolitan Kansas City, 397 U.S. 50, 57 (1970), with Leopold v. Young, 340 F.Supp. 1014, 1017 (D. Vt. 1972). The Connecticut statutory system at issue "does not require malapportionment, but only permits towns to agree among themselves on the terms under which they will consolidate, including the apportionment of school board members." Ibid. See C. Wright, Handbook of the Law of the Federal Courts 190, text at n. 21 (1970).

The situation is no different as to Special Act 74-69, regardless of the interpretation placed on it. If, as plaintiffs urge, it merely sets the time at which board members will take office, there is no question of enjoining its enforcement. And even if, as defendants urge, it represents a "fixing" of the present apportionment of board members, it applies by its terms only to District No. 5 and is therefore not a statute of statewide application.

Moreover, as the remainder of this opinion makes

clear, the law has progressed considerably since Giordano, and what Judge Timbers concluded was a question requiring three judges for resolution is now so clearly settled that the issue lacks the substantiality requiring a three-judge court. In such circumstances a single judge possesses the power to dispose of the case. Bailey v. Patterson, 369 U.S. 31 (1962); Anderson v. Nemetz, 474 F.2d 814 (9th Cir. 1973); Consumer Party v. Tucker, 364 F.Supp. 594, 604 (E.D. Pa. 1973). See Utica Mutual Ins. Co. v. Vincent, 375 F.2d 129, 131 n. 1 (2d Cir. 1967).

Regional District No. 14 began operating on July 1, 1968, having been approved several months earlier by separate referenda conducted in Woodbury and Bethlehem. The District's board consists of eight members, with four chosen by the electors of each of the two member towns. Plaintiff Scott bases his objection to the equal division of the membership on a comparison of the populations of the two communities. According to the 1970 census, Woodbury's population was 5,869 and Bethlehem's was 1,923, and of the 1,887 pupils attending school in the District as of May, 1973, 1,385 were from Woodbury and 492 were from Bethlehem. Finally, for each of the three consecutive academic years ending with 1973-74,

Woodbury's contribution to the Regional District's budget was approximately two and one-half times as large as Bethlehem's. In short, plaintiff complains that Woodbury has roughly 75% of the joint district's population and pupils, and contributes a similar proportion of the joint district's budget, but has only 50% of the votes on the body that administers the District.

The comparable statistics for District No. 5, which commenced operations in the 1952-53 academic year, reflect a similar imbalance. Orange, the largest of the three towns, has approximately 55% of the population, 55% of the student body, and contributes 55% of the District's budget. Bethany accounts for approximately 15% of each category, and Woodbridge 30%. Each Town, however, elects three members of the nine-member joint Board of Education.

Defendants do not dispute the contention that the votes of the Woodbury and Orange electors are in fact substantially diluted. Cf. Powers v. Maine School Administrative District No. 1, supra, 359 F.Supp. at 35. Nor do they seriously contest the proposition that because the members of the Regional Boards are chosen by election[6/] the one person-one vote rules must apply. E.g., Hadley v. Junior College

District of Metropolitan Kansas City, 397 U.S. 50, 54 (1970); Rosenthal v. ard of Education of Central High School District No. 3 of Town of Hempstead, 497 F.2d 726, 729 (2d Cir. 1974).

On the merits of the motions for summary judgment defendants press only two contentions. The first is that the Regional Boards whose composition is at issue perform an insufficiently broad range of governmental functions and are therefore not the type of elective bodies to which apportionment requirements apply. Compare Salyer Land Co. v. Tulare Lake Basin Water Storage District, 410 U.S. 719, 728-29 (1973). Both Regional Boards lack several significant powers that were possessed by the junior college board of trustees in Hadley, and defendants contend that these were essential both in Hadley and in similar cases. These include the power to levy and collect taxes, to issue bonds, and to pass on petitions to annex school districts and acquire property by condemnation.

Defendants' approach, enumerating the powers that these Regional Boards lack, is misconceived. Cf. Hadley v. Junior College District, supra, 397 U.S. at 53-54; Rosenthal v. Board of Education, supra, 497 F.2d at 728. The proper question is rather whether the powers the Boards do have in fulfilling what "has traditionally been a vital governmental function," Hadley v. Junior College District, supra, 397 U.S.

at 56, make it reasonable to describe the board members as "government officials in every relevant sense of that term." Ibid.

With the question thus posed, the answer becomes clear. The powers of the two Boards before this Court do not differ significantly from those of the Board in Rosenthal, supra, and the only question that troubled the Court of Appeals in Rosenthal was whether the manner of selection of board members was more nearly elective than it was appointive; it was obvious to the Court that if the board members were elected, their powers were sufficiently governmental to invoke one person-one vote requirements. 497 F.2d at 729, text at n. 10. As the Court of Appeals has more recently observed, "there was no question [in Rosenthal] that the body in question performed substantial governmental functions."[7/] Education/ Instruccion, Inc. v. Moore, ___ F.2d ___, ___ (2d Cir. 1974), Slip op. at 5320 (August 21, 1974). Compare, e.g., Dameron v. Tangipahoa Parish Police Jury, 315 F.Supp. 137, 138 (E.D. La. 1970). See also, Regional High School District No. 3 v. Town of Newton, 134 Conn. 613, 620-21 (1948).

Defendants' second argument relies on dictum in Avery v. Midland County, 390 U.S. 474 (1968). They suggest

that regional districts are a form of educational innovation and are for that reason immune from judicial interference, even interference in the name of equal protection. Defendants contend that requiring equal apportionment will make it unlikely that smaller towns will join regional districts, and that a legitimate attempt by the State to provide for more efficient operation of schools and improved educational opportunity for students will thereby be frustrated.

In Avery, which held that elections for County Commissioners Court in Texas must be conducted in accordance with principles of voting equality, the Supreme Court acknowledged in passing that local governments are under immense pressures to solve local problems, and denied that such experimentation is foreclosed by the Constitution. The two cases cited by the Court, however, indicate that these observations were in no way intended to encourage retreat from the Constitutional imperative. Sailors v. Board of Education, 387 U.S. 105 (1967), exempted a board whose members were appointed and whose duties were administrative, and in Dusch v. Davis, 387 U.S. 112 (1967), the Court upheld residence requirements imposed on the members of a multi-county legislative body, finding that the voting power of the

electors of the component counties was not diluted. Defendants express a legitimate concern in urging that there be no needless thwarting of experimentation with regional arrangements in general or in the field of education in particular. The desirability of such arrangements, however, cannot suspend the Fourteenth Amendment's apportionment requirements. If regional school districts are to be encouraged, it will have to be done by creative legislative authorization and cooperative local arrangements that resolve the competing large and small town interests within Constitutional standards. Although the Constitution leaves a great deal of room for legitimate experimentation and innovation, it also "imposes one ground rule for the development of arrangements of local government: a requirement that units with general governmental powers over an entire geographic area not be apportioned among . . . districts of substantially unequal population." Avery v. Midland County, supra, 390 U.S. at 485-86.

The only question remaining is one of remedy. Plaintiffs in both actions have requested a broad range of coercive injunctive relief, both permanent and interlocutory. Plaintiffs have clearly established that they are entitled to a declaratory judgment, but it does not follow that the

requested permanent mandatory injunction is also appropriate at this time. While it is true that the violations could be cured without legislative action, compare Hadley v. Junior College District, supra, the relatively few options presently available to defendants were designed by a legislature that may well have thought that regional districts would be free from one person-one vote requirements. Respect for the pre-eminence of the states in matters of educational policy requires, therefore, that the legislature be given a reasonable opportunity to develop new alternatives in light of this Court's declaration before an injunction issues requiring defendants to act. Cf. Powers v. Maine School Administrative District No. 1, supra. For example, the legislature may want to consider the procedures for forming new districts and for dissolving, or permitting withdrawal from, present districts now that one person-one vote principles are applicable. The General Assembly is to convene in January and should have at least two months to consider whether it wishes to frame legislation responsive to the concerns of these and other aspects of regional districts. Permanent injunctive relief will therefore be denied, without prejudice to a renewed application after March 1, 1975. At any time prior to that

date, any parties may submit to the Court their proposals for reapportionment plans and implementation procedures, which the Court will review before formulating a final decree after March 1, 1975.

With respect to the requests for interim relief pending entry of a final decree, the Court is not willing needlessly to disrupt on-going educational activities pending legislative action. The requested decrees would work a substantial departure from the status quo, and the request for such relief is therefore denied. Plaintiffs are free to seek supplemental interim relief if it should appear that the Regional Districts are about to undertake substantial building programs or make other substantial capital commitments.

Accordingly, plaintiffs' motions for summary judgment are granted,[8/] and judgment will enter declaring that the allocation of membership on the Boards of Education of Nonnewaug Regional School District No. 14, and of Regional High School District No. 5, deprives plaintiffs of the equal protection of the laws in violation of the Fourteenth Amendment.

Dated at New Haven, Connecticut, this 22 day of November, 1974.

Jon O. Newman
United States District Judge

FOOTNOTES

1/ Plaintiff Scott seeks to pursue the suit as a class action. Since "any equitable relief to which [plaintiff] may be entitled would benefit all persons similarly situated, there is no compelling reason to designate a class." Bridgeport Guardians, Inc. v. Members of Bridgeport Civil Service Commission, 354 F.Supp. 778, 783 (D. Conn. 1973), modified on other grounds, 482 F.2d 1333 (2d Cir. 1973). Class action designation is accordingly denied.

2/ The Town of New Hartford has moved to appear in Scott as amicus curiae. The motion is granted.

3/ Other defendants have raised the same issue in the form of an affirmative defense alleging that the Towns are necessary parties without whose joinder the action cannot go forward, Fed. R. Civ. P. 19.

4/ Defendants in Baker note that in their action the parties have not entered into a stipulation and urge that summary judgment is inappropriate because a triable issue of fact is presented by disagreement about the powers of their Board. There is no dispute, however, that the powers of the Boards are defined by the Connecticut General Statutes,

compare Education/Instruccion, Inc. v. Moore, ___ F.2d ___ (2d Cir. 1974), Slip op. at 5321 (August 21, 1974)(Oakes, J. dissenting); the only disagreement is whether as a matter of law the powers conferred by statute are sufficient to bring the Boards within apportionment requirements.

5/ The Baker defendants oppose summary judgment on the ground that the plaintiffs are not real parties in interest, Fed. R. Civ. P. 17(a), and on the additional ground that jurisdiction of this Court has been invoked by "improper or collusive joinder," 28 U.S.C. § 1359. Rule 17(a) is designed to make certain that an action is brought by one who, by the substantive law, has the right sought to be enforced. Rackley v. Board of Trustees of Orangeburg Regional Hospital, 35 F.R.D. 516 (E.D. S.C. 1964); 3A Moore's Federal Practice ¶ 17.07, text at n. 1. But as this opinion explains, text following n. 2, supra, the right sought to beprotected in this case is that of the Orange electors in an undiluted vote. Section 1359 is similarly designed to prevent collusive attempts to "manufacture" diversity jurisdiction, O'Brien v. Avco Corporation, 425 F.2d 1030 (2d Cir. 1969). It thus has no application in the present context. Moreover, even if, as defendants allege, officials of the Town of Orange solicited plaintiffs'

participation, and even if the Town of Orange is paying the expenses of the litigation, it does not follow that there has been the kind of "collusion" at which the statute is directed. Allstate Ins. Co. v. Lumbermens Mutual Casualty Co., 204 F.Supp. 83 (D. Conn. 1962).

6/ The Baker defendants do suggest that the town meetings from which their Board members are elected are exercises of legislative power and not "popular elections" within the meaning of Hadley, and that one person-one vote requirements for that reason do not apply. Defendants do not dispute, however, that in each member town all registered voters are eligible to vote for board members, Conn. Gen. Stat. § 10-46(b). Nothing in Hadley indicates that the Court intended to limit its holding to elections of a particular type. On the contrary, Justice Black took pains to observe that at the center of each of the Supreme Court's reapportionment cases was "the decision of the government to have citizens participate individually by ballot in the selection of certain people who carry out governmental functions." 397 U.S. at 54. To accept the consequences of defendants' characterization would be to exalt form over substance at the expense of the right to vote.

7/ The Rosenthal Board also lacked the power to set taxes. 497 F.2d at 728, n. 7 and accompanying text.

8/ The motion of defendants in Scott is correspondingly denied.

A 36

JUDGMENT

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

JOSEPH M. SCOTT, SR.	)	
	)	
V.	)	CIVIL NO. B-538
	)	
NONNEWAUG REGIONAL SCHOOL DISTRICT NO. 14, ET AL	)	

JUDGMENT

This case having come on for consideration on plaintiff's Motion for Summary Judgment and the Court having issued its Memorandum of Decision under date of November 22, 1974, granting said motion and declaring that the allocation of membership on the Board of Education of Nonnewaug Regional School District No. 14 deprives plaintiff of equal protection of the laws in violation of the Fourteenth Amendment,

It is accordingly ORDERED, ADJUDGED and DECREED that judgment be and is hereby entered in favor of the plaintiff on the plaintiff's Motion for Summary Judgment and judgment is entered declaring that the allocation of membership on the Board of Education of Nonnewaug Regional School District No. 14 deprives plaintiff of equal protection of the laws in violation of the Fourteenth Amendment.

Dated at Bridgeport, Connecticut, this 5th day of December, 1974.

SYLVESTER A. MARKOWSKI, Clerk

By Vincent R. DeRosa
Vincent R. DeRosa
Deputy in Charge

Court Press Form No. 2-Affidavit.
H.15

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

JOSEPH M. SCOTT, SR.,

Plaintiff-Appellee,

against

NONNEWAUG REGIONAL SCHOOL DISTRICT
NO. 14, ET AL.,

Defendants-Appellants.

State of New York,
County of New York,
City of New York—ss.:

DAVID F. WILSON being duly sworn, deposes and says that he is over the age of 18 years. That on the 12th day of March, 1975, he served two copies of the Joint Appendix on W. Fielding Secor, Esq. and Carl R. Burns, Esq. the attorneys for Appellee Town of Woodbury and for Plaintiff-Appellee Scott, respectively

~~the attorney for the~~

by depositing the same, properly enclosed in a securely sealed post-paid wrapper, in a Branch Post Office regularly maintained by the Government of the United States at 90 Church Street, Borough of Manhattan, City of New York, directed to said attorneys at 41 Church Street, Waterbury, Conn. No. 143 Rowayton Avenue, Rowayton, Conn. ( ) N.Y., that being the address designated by them for that purpose upon the preceding papers in this action.

David F. Wilson

Sworn to before me this

12th day of March, 1975.

Courtney F. Brown

COURTNEY F. BROWN
Notary Public, State of New York
No. 31-3472920
Qualified in New York County
Commission Expires March 30, 1976